IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION NO. 10-105
v.	:	
JACK HRYNKO	:	CIVIL ACTION NO. 15-5753

MEMORANDUM

Padova, J. **January 5, 2016**

Before the Court is Jack Hrynko's pro se Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255. For the following reasons, we dismiss the Motion.

I. BACKGROUND

On March 23, 2010, Jack Hrynko pled guilty to one count of robbery which interferes with interstate commerce, and aiding and abetting, in violation of 18 U.S.C. §§ 1951(a) and 2 (Count One), and one count of using and carrying a firearm during and in relation to a crime of violence, and aiding and abetting, in violation of 18 U.S.C. §§ 924(c)(1) and 2 (Count Two). The charges arose out of Hrynko's participation in an armed robbery of Fantis Pizza on January 12, 2008.

Hrynko was sentenced on January 24, 2011 to 120 months of imprisonment on Count One and a mandatory consecutive sentence of 84 months of imprisonment on Count Two, for a total term of imprisonment of 204 months. Hrynko was also sentenced to five years of supervised release, a special assessment of $200, a fine of $500, and restitution in the amount of $650.

Hrynko filed a pro se "Motion for Reconsideration[,] Sentence Modification or Sentence Reduction" on June 23, 2011. We interpreted that Motion to be a motion for reduction of

sentence pursuant to Federal Rule of Criminal Procedure 35(a) and dismissed the Motion for lack of jurisdiction because more than seven days had passed since the entry of our judgment of sentence. Hrynko did not file an appeal in the United States Court of Appeals for the Third Circuit.

Hrynko filed a pro se Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 on September 8, 2015. Because Hrynko had not used the approved court form for his Motion, we directed him to refile his Motion on the approved form, and he did so on October 22, 2015. The Motion raises just one ground for relief. Hrynko claims that his sentence is unconstitutional because he was sentenced pursuant to a statute that required a mandatory minimum term of imprisonment, and he contends that the United States Supreme Court has deemed mandatory minimum sentences to be unconstitutional.

II. LEGAL STANDARD

Hrynko has moved for relief pursuant to 28 U.S.C. § 2255, which provides as follows:

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255(a). "Section 2255 does not provide habeas petitioners with a panacea for all alleged trial or sentencing errors." United States v. Perkins, Crim. A. No. 03-303, Civ. A. No. 07-3371, 2008 WL 399336, at *1 (E.D. Pa. Feb. 14, 2008) (quoting United States v. Rishell, Crim. A. No. 97-294-1, Civ. A. No. 01-486, 2002 WL 4638, at *1 (E.D. Pa. Dec. 21, 2001)). To prevail on a § 2255 motion, the movant's claimed errors of law must be constitutional, jurisdictional, "a fundamental defect which inherently results in a complete miscarriage of

justice," or "an omission inconsistent with the rudimentary demands of fair procedure." Hill v. United States, 368 U.S. 424, 428 (1962).

III. DISCUSSION

The Government argues that the Motion should be dismissed for lack of jurisdiction because it is untimely and also argues, in the alternative, that the Motion should be denied because Hrynko relies exclusively on Pennsylvania state cases and statutes, which cannot provide a basis for federal habeas relief.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a one year limitations period on the filing of motions for post-conviction relief. 28 U.S.C § 2255(f). The statute provides, in pertinent part, that the one year limitations period "shall run from the latest of – (1) the date on which the judgment of conviction becomes final; . . . (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been . . . made retroactively applicable to cases on collateral review; or (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." Id. If a petitioner "does not pursue a timely direct appeal to the court of appeals, his or her conviction and sentence become final, and the statute of limitation begins to run, on the date on which the time for filing such an appeal expired." Kapral v. United States, 166 F.3d 565, 577 (3d Cir. 1999).

As stated above, Hrynko was sentenced on January 24, 2011. Judgment was subsequently entered on January 26, 2011. "In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of: (i) the entry of either the judgment or the order being appealed; or (ii) the filing of the government's notice of appeal." Fed. R. App. P. 4(b)(1)(A). Therefore, the statute of limitations period began to run on February

7, 2011 and expired on February 6, 2012. Hrynko, however, did not file his § 2255 Motion until September 8, 2015, over four years after his judgment became final and over three years after the time to file had expired. Therefore, Hrynko's petition is untimely pursuant to 28 U.S.C. § 2255(f)(1).

Hrynko nevertheless argues that his petition is timely, as he filed it within sixty days of learning of a decision by the Supreme Court of Pennsylvania that, he claims, renders his sentence unconstitutional. Specifically, he contends that "[t]he facts upon which the claim is predicated were unknown to the petitioner and could not be ascertained by the exercise of due diligence," thereby qualifying for the "newly discovered evidence" exception to the statute of limitations pursuant to 28 U.S.C. § 2244(b)(3)(A). (Pet'r's Aff. at 1.) Notwithstanding Hrynko's reliance on the wrong statute,[1] 28 U.S.C. § 2255(f)(3) provides that the limitations period begins to run on "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been . . . made retroactively applicable to cases on collateral review." 28 U.S.C. § 2255(f)(3).

The Supreme Court of Pennsylvania decision on which Hrynko relies in arguing that his Motion is timely is Commonwealth v. Hopkins, 117 A.3d 247 (Pa. 2015), in which the court held that the mandatory minimum sentence in Pennsylvania's "Drug-Free School Zones" law was unconstitutional in light of Alleyne v. United States, 133 S. Ct. 2151 (2013) because the law required the imposition of a mandatory minimum sentence based on facts found at sentencing, not facts found by a jury beyond a reasonable doubt. Hopkins, 117 A.3d at 258-59. As this is not a decision by the Supreme Court of the United States, it does not trigger the exception to the

[1] 28 U.S.C. § 2244 applies to applications for the writ of habeas corpus brought in connection with state court convictions, not federal convictions. Moreover, § 2244(b)(3)(A) applies only to the rules that must be followed in filing a second or successive § 2254 petition.

one-year statute of limitations pursuant to 28 U.S.C. § 2255(f)(3). Moreover, to the extent that Hrynko actually means to rely on Alleyne, the Third Circuit has instructed that "Alleyne has not been made retroactive to cases on collateral review," and, therefore, it also cannot serve as the basis for an extended limitations period pursuant to 28 U.S.C. § 2255(f)(3). Talik v. Warden Lewisberg USP, 621 F. App'x 94, 96 (3d Cir. 2015) (citing United States v. Reyes, 755 F.3d 210, 212-13 (3d Cir. 2014)). We thus conclude that Hrynko's Motion is untimely and that we do not have jurisdiction to consider it.

IV. CONCLUSION

For the foregoing reasons, we dismiss Hrynko's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255. We further find that an evidentiary hearing is not necessary and that, because Hrynko has failed to make a substantial showing of the denial of a constitutional right, there is no basis for issuing a certificate of appealability. An appropriate Order follows.

BY THE COURT:

/s/John R. Padova

John R. Padova, J.

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ORDER

AND NOW, this 5th day of January, 2016, upon consideration of Petitioner's pro se Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Criminal Docket No. 39), and the Government's Response thereto, and for the reasons stated in the accompanying Memorandum, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED**.
2. As Petitioner has failed to make a substantial showing of the denial of a constitutional right, there is no basis for the issuance of a certificate of appealability.
3. The Clerk is directed to **CLOSE** Civil Action No. 15-5753.

BY THE COURT:

/s/John R. Padova

John R. Padova, J.